

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
March 27, 2003

Present: Chairperson Robert Miyashiro
Representative of the Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Sherry Williams
Representative of the Director of the Office of Planning and Research
Member Greg Larson
Representative of the State Controller
Member John Lazar
City Council Member

Vacant: Local Elected Official
Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Miyashiro called the meeting to order at 9:38 a.m.

The Commission observed a moment of silence in honor of Kirk Stewart, former Executive Director for the Commission on State Mandates. Mr. Stewart passed away on March 14, 2003.

APPROVAL OF MINUTES

Item 1 February 27, 2003

Member Larson noted that Walter Barnes reviewed the minutes. Therefore, upon motion by Member Larson and second by Member Williams, the minutes were adopted. Member Sherwood abstained.

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

TEST CLAIM

Item 2 *Enrollment Fee Collection*, 99-TC-13
Los Rios Community College District, Claimant
Consolidated With:
Enrollment Fee Waivers, 00-TC-15
Glendale Community College District, Claimant
Education Code Section 76300
Statutes 1984xx, Chapter 1
Statutes 1984, Chapters 274 and 1401
Statutes 1985, Chapters 920 and 1454
Statutes 1986, Chapters 46 and 394
Statutes 1987, Chapter 1118

Statutes 1989, Chapter 136
Statutes 1991, Chapter 114
Statutes 1992, Chapter 703
Statutes 1993, Chapters 8 (AB 46), 66 (SB 399), 67 (SB 1012), and 1124 (AB 1561)
Statutes 1994, Chapters 153 (AB 2480) and 422 (AB 2589)
Statutes 1995, Chapter 308 (AB 825)
Statutes 1996, Chapter 63 (AB 3031)
Statutes 1999, Chapter 72 (AB 1118)
California Code of Regulations, Title 5, Sections 58500 – 58508, 58600, 58601, 58610 – 58613, 58620, 58630
Board of Governors Fee Waiver Program Manual for 2000/2001

Eric Feller, Commission Counsel, presented this item. He noted that this item combined two test claims, *Enrollment Fee Collection* and *Enrollment Fee Waivers*. The activities pled by the claimants related to collecting, refunding, and waiving fees; and administering, documenting, and reporting on financial aid. Staff found the following activities to be reimbursable:

- Calculating and collecting student enrollment fees,
- Exempting or waiving fees pursuant to criteria in statute and regulation,
- Reporting to the community college Chancellor's Office on the number of and amounts for fee waivers, and
- Adopting procedures to document student financial assistance, document public benefits, and attend financial aid training.

Staff found that the activity of making refunds for program changes was not a new program or higher level of service. Staff recommended that the Commission adopt the staff analysis and recommendation.

Parties were represented as follows: Keith Petersen, representing the Los Rios and Glendale Community College Districts; Alice Kwong, with the Los Rios Community College District; and Susan Geanacou, Randy Katz, and Leslie Lopez, Deputy Attorney General, for the Department of Finance.

Mr. Petersen noted that the *Enrollment Fee Collection* test claim was filed first, followed by *Enrollment Fee Waivers* a year later. Both test claims derive from Education Code section 76300. With the test claims combined, the claimants alleged 13 reimbursable activities. However, the staff recommendation consolidated some and limited others, resulting in seven proposed reimbursable activities. He disagreed with the staff finding that making refunds for program changes and collecting enrollment fees for non-resident students were not reimbursable activities.

As to the staff finding regarding collection of enrollment fees from non-resident students, Mr. Petersen argued that there was a factual dispute. He agreed that non-resident students paid tuition and that tuition was collected from non-resident students, but he asserted that collecting tuition was not the same as collecting enrollment fees. Therefore, the fact that tuition fees were collected from non-resident students was irrelevant to the collection of enrollment fees. The collection could occur at different times and involve different staff.

Regarding staff's finding that issuing refunds for program changes is not a new program or higher level of service, Mr. Petersen suggested that it should read that program changes are not a new program or higher level of service. He stated that community colleges may allow a student to add or drop classes pursuant to district policy, and that allowing program changes was not invented with the *Enrollment Fee Collection* program. He maintained that Title 5, section 58508, clearly intended that the community college districts refund enrollment fees under certain conditions. Also, he disagreed with staff's application of the *City of Merced* court case, which, he summarized, states that if something was discretionary, anything that follows that is mandatory, and is not reimbursable. He requested that the activity of making refunds be reinstated as a reimbursable activity.

Member Lazar requested staff to comment. Regarding non-resident enrollment fee collection, Mr. Feller stated that there was no evidence in the record that collecting tuition from non-residents was different from collecting an enrollment fee from all students. Regarding the issue of refunds, Mr. Feller stated that districts do not have to adopt a policy requiring program changes and because districts have the option to prohibit program changes, issuing refunds is not a mandated program.

Chairperson Miyashiro asked the Department of Finance to comment. Ms. Geanacou supported the staff analysis regarding the refunding issue.

Mr. Petersen suggested, as a practical middle ground, that if a district had a pre-existing policy before 1984 to allow program changes, they should be reimbursed for the refund process. If the policy was not to allow program changes, then there would be nothing to reimburse. With regard to non-resident tuition fees, he stated that collection of tuition fees or enrollment fees may be different for every college, and thus, as a matter of law, they cannot be said to be the same.

Ms. Kwong noted that it was only fair to allow program changes and to provide students with that flexibility, given that many come directly from high school.

Ms. Geanacou pointed out that the issue of possibly refunding fees was only material during the first two weeks of instruction, per Education Code section 58508, subdivision (a).

Chairperson Miyashiro asked why the two test claims were combined. Paula Higashi, Executive Director, explained that it seemed more economical for staff and Commission members to address these claims in one analysis and one hearing since the alleged statutes overlapped. She added that there was no objection from the claimant.

Mr. Petersen stated that he had no dispute regarding *Enrollment Fee Waivers*.

Chairperson Miyashiro noted that the legislative bill analysis cited a self-financing authority disclaimer. He asked Paul Starkey, Chief Legal Counsel, to explain what the disclaimer meant relative to the Commission's jurisdiction, as well as why the Commission was entertaining a claim that suggests that the costs were above that provided by the Legislature. Mr. Starkey responded that on this particular issue, the Commission follows the direction of the courts, which have said that the Commission has the jurisdiction to determine whether or not a mandate exists. He added that it was not uncommon for the Legislature to put a dollar amount on a particular activity, but such action was not determinative of the Commission's ability to find the existence of a mandate.

Chairperson Miyashiro acknowledged that the parties agreed that a mandate exists. His concern was how to determine whether the two percent retention of fees provided by the Legislature was

insufficient. Mr. Starkey explained that in analyzing a claim, staff first looked at the statute to see if a duty was imposed. Then, staff looked to the record and the evidence presented by the parties. In this case, the claimants provided a declaration. Mr. Feller added that Government Code section 17556 requires that the revenue be sufficient to fund the cost of the mandate. The declaration provided by the claimants indicated that those revenues were not sufficient.

Ms. Higashi also added that the basic statutory requirements set minimum amounts in order to file a test claim with the Commission on State Mandates. She noted that at the time these test claims were filed, the threshold was \$200. Effective September 30, 2002, the minimum threshold became \$1000, which also applies for filing reimbursement claims with the State Controller's Office.

In relation to the schedule of costs incurred by the Los Rios Community College District that was submitted with the claim, Chairperson Miyashiro attempted to distinguish between a sufficient amount and what was ultimately spent.

Mr. Petersen argued that the Commission's jurisdiction for finding costs of expenses of reimbursement is if there were sufficient funds in the legislation or if the legislation granted the local agency the power to charge their consumers a fee. He asserted that colleges report to the Chancellor's Office how much they collected, and the Chancellor's Office gives them credit for 98 percent of what was collected against their statewide appropriation for educating college students. In this way, the Legislature avoided putting a funding requirement in the legislation. He stated that the two percent was an accounting transaction and not a fee charged to students. He noted the possibility that the Legislature could take away the two percent, which would leave the actual cost of collecting the fee. In the mandate reimbursement process, revenue received directly is subtracted from the actual cost. In this case, he contended that the costs were uniform and depend on the number of students.

In an effort to reconcile the math on the schedule of estimated costs provided by the claimant, which was based on an informal survey, Chairperson Miyashiro led a discussion regarding the people engaged in the activity of collecting fees and providing refunds, and how much of their time was spent doing the activities. Mr. Petersen answered questions from members and provided examples, noting that it was an intense process that occurred at the beginning of a semester. Chairperson Miyashiro explained that he wanted the Commission to have a good sense of what was sufficient to fund the mandate going into the reimbursement process, as opposed to after the fact.

Mr. Peterson stated that he understood the concern, but suggested that focusing on numbers based on a general survey would be inappropriate. He said, the Commission's role is to decide whether the activities are new. The State Controller's Office has jurisdiction to adjust costs to be reasonable when claims are filed. He contended that the two percent was a legal threshold issue under Government Code section 17556 as to whether a mandate exists, and noted that neither the Legislature nor the Chancellor's Office said the two percent was adequate. Therefore, as a matter of law, it was not adequate. It was just an arbitrary number that will be subtracted from the actual cost.

In order for the Commission to have a better sense of what the mandate will ultimately cost when it adopts the parameters and guidelines, Chairperson Miyashiro directed Commission staff and other parties to participate and assist in the development of unit cost rates for these claims, as opposed to simply specifying what activities were reimbursable. Member Larson and Member

Sherwood agreed.

However, Member Sherwood clarified that the Commission's decision has to be based on the facts and information brought forward as to whether a mandate exists and not based on the costs involved. Chairperson Miyashiro and Member Larson agreed.

Mr. Petersen supported the idea of unit cost rates.

Member Sherwood raised the issue of the Board of Governors Fee Waiver Program Manual.

Mr. Petersen maintained that in order to receive the two percent, districts were required to report the fee waiver student data to the Board of Governors. According to Education Code section 76300, if it is not reported, districts can be penalized ten percent of entire annual appropriations. So to comply with Title 5 and the code section, districts had to comply with the manual.

Ms. Geanacou opposed the staff finding that the manual constituted an executive order. She argued that there was no evidence in the record that the consultation process set forth in Education Code section 70901, subdivision (e), was followed by the Chancellor's Office. In addition, she stated that the manual specifically says that it is additional guidance on the administration of the Board of Governors fee waiver program. Therefore, she asserted that any activities claimed to flow from the manual should not be reimbursable.

Member Williams agreed with the comments made by Member Sherwood and Ms. Geanacou, adding that the manual was clearly not mandatory because it was not adopted or mandated by the Board of Governors.

Staff's position was that the manual met the broad definition of an executive order provided by Government Code section 17516.

After further discussion, Mr. Petersen withdrew the Board of Governors Fee Waiver Program Manual from the test claim.

Ms. Geanacou stated that the Department of Finance wanted to draw a distinction between fee exemptions and fee waivers for the six student groups in Education Code section 76300. She asserted that student groups one, two, and three were not subject to the fee requirements since they were exempt from paying fees by virtue of signing up for one of the three types of classes at the time of registration. Education Code section 76300, subdivision (e), provides the fee exemption without the colleges having to do anything, and therefore, she proposed that there be no reimbursement for any of the activities associated with Education Code section 76300, subdivision (e), for fee exemptions.

Mr. Petersen commented that there would still be some kind of transaction to verify that the student was indeed not liable for enrollment fees.

Mr. Feller stated that activities were analyzed according to the definition of programs. In this case, staff found a reimbursable activity, though slight, in determining an exemption for a student, based on the course that a student is enrolling in. Before fees existed, there was no need to make that determination, and thus, it was a new activity.

Mr. Katz noted that the determination of the type of course had always been practiced by the community colleges as part of the course accreditation process. Mr. Petersen responded that the issue was whether or not there was a new activity.

[At this time, a short break was taken.]

Member Larson indicated that he would have to leave the meeting at 11:30.

Ms. Geanacou contended that if a student approaches the registrar's window and signs up for any one or all of the three types of classes listed in groups one, two, and three, that student would never go to the enrollment fee payment window. Mr. Petersen disputed Ms. Geanacou's assertion, but agreed that there was no fee collected. He reiterated his point that it was a new activity to determine an exemption for a student, regardless of the time or cost involved.

Chairperson Miyashiro offered direction to staff, in developing the parameters and guidelines, to propose a unit cost rate for the Commission's consideration. All parties should be included in the process of determining the unit cost, which should be as focused as possible, recognizing that there are always limitations in data and survey instruments used.

Member Lazar made a motion to adopt the staff recommendation, noting the withdrawal of the manual and the direction that staff provide a unit cost. With no second, the motion failed.

Member Williams made a motion to adopt the staff analysis, noting the withdrawal of the manual and the direction that staff provide a unit cost, but deleting the three groups of students relative to the fee exemption. With a second by Member Lazar, the motion carried unanimously.

STAFF REPORTS

Item 3 Final Report to State Auditor, Bureau of State Audits, *School Bus Safety II* Audit Report

Nancy Patton, Staff Services Manager, presented this item. She noted that on March 28, 2002, the Bureau of State Audits released its audit report on the *School Bus Safety II* program, which required the Commission to report within 60 days, six months, and one year of release of the report. On March 17, 2003, staff submitted the Commission's final report on implementation to the Bureau of State Audits.

Ms. Patton stated that since release of the audit report, the following substantive steps were taken to implement the audit recommendations:

- Existing procedures were amended, and several new procedures were implemented, so that all relevant parties, including the Legislature and state agencies, are notified as claims proceed through the process.
- A rulemaking package was initiated to incorporate the process for developing statewide cost estimates in the Commission's regulations.
- New parameters and guidelines language was adopted, clarifying the documentation necessary to support reimbursement claims.
- Staff continues to provide annual training to legislative staff, state agency staff, and local agencies and school districts on the mandates process; and to review Commission processes and resources for ways to reduce the time it takes to complete a test claim.

Ms. Patton reported that this completes implementation of the audit report recommendations for *School Bus Safety II*.

Item 4 New Audit: *Peace Officer Bill of Rights* (CSM-4499), *Animal Control* (98-TC-11), and Other Mandates

Nancy Patton, Staff Services Manager, presented this item. She noted that on March 12, 2003, the Joint Legislative Audit Committee authorized an audit of the process used by the Commission to develop statewide cost estimates and to establish parameters and guidelines for reimbursement claims related to the *Peace Officer Procedural Bill of Rights* mandate and the *Animal Adoption* mandate. The committee also authorized the State Auditor to conduct audits on a sample of other state mandates.

Ms. Patton indicated that Commission staff met with staff from the Bureau of State Audits on March 25, 2003. The Bureau of State Audits staff reported that they would be conducting the audits for the *Peace Officer Procedural Bill of Rights* mandate and the *Animal Adoption* mandate simultaneously. Staff provided the Bureau of State Audits with administrative records for both programs. Further meetings to discuss audit plans will be set. The tentative release date for their final report is late September or early October of 2003.

Item 5 Update on Pending Legislation: SB 55, SB 93, SB 497, SB 525, AB 405, AB 613, and AB 637

Ms. Higashi noted that this was an information item that identified all of the pending bills that would have a potential impact on mandate reimbursement or test claim processes. Hearings have not been held on any of the bills. She stated that there would have to be an action item for the Commission to take a position on one of these bills.

Member Lazar requested that staff provide comments regarding the Harmon Bill.

Chairperson Miyashiro asked for a brief background on the Harmon Bill. Ms. Higashi explained that the Harmon Bill mirrors the Cox Bill, which was vetoed in 2001. She stated that it addresses a number of provisions in the Government Code of particular interest to the Commission, including one provision that would add another member to the Commission to serve as an alternate for the local officials in the event they are unable to attend a meeting, and another provision that would prohibit Commission legal representation in any court action from proceedings involving Commission decisions. There were other provisions that would affect other processes, such as filing of reimbursement claims, and the State Mandates Apportionment System. She added that the Commission did not previously take a position on the bill.

Chairperson Miyashiro asked for a report from staff at the next meeting regarding Member Lazar's request for more background and staff comments as to how day-to-day operations would be impacted by the bill.

Item 6 Executive Director's Report on Pending Workload, Budget, and Future Agendas

Ms. Higashi noted the following:

- *Workload.* Four new test claims and an amendment were filed in the last month. Many more test claims are expected to be filed by June 30. A prehearing conference on parameters and guidelines amendments scheduled for immediately after the hearing has been moved to 1:00 p.m.

- *Legislation.* As part of the Governor's proposed budget, the Commission would lose three positions, and meet six times a year instead of monthly. The first budget hearings are in April.
- *Future Hearing Agendas.* April's agenda will include test claims and incorrect reductions claims. There were some documentation questions regarding the parameters and guidelines for *Standards Based Accountability* and *Pupil Promotion and Retention*, so these items will be moved to the May agenda. It was announced that the June hearing would be cancelled in an effort to move to bi-monthly hearings. Meetings with claimant representatives will be scheduled to coordinate scheduling issues.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00816, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 01-L-04 [*Physical Performance Tests*]
2. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471, in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-16 [*San Diego MIA*]
3. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number B156870, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-17 [*Domestic Violence*]
4. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number BS069611, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-18 [*SEMS*]
5. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 02CS00994, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-01 [*School Bus Safety II*]
6. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number S109125, in the Supreme Court of the State of California. CSM Case No. 02-L-02 [*Pupil Expulsions*]
7. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number S109219, in the Supreme Court of the State of California. CSM Case No. 02-L-03 [*School Site Councils*]
8. *County of San Bernardino v. Commission on State Mandates of the State of California, et.al.*, Case Number B163801, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 02-L-04 [*Property Tax Administration*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

Hearing no further comments, Chairperson Miyashiro adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Miyashiro reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business and upon motion by Member Lazar and second by Member Sherwood, Chairperson Miyashiro adjourned the meeting at 12:08 p.m.

PAULA HIGASHI
Executive Director